



TRIBAL EXECUTIVE COMMITTEE

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September 17, 2004

Steve Williams
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sent via email: comments-northern-nez-perce-red-river@fs.fed.us

RE: Tribal Comments on the Red Pines DEIS

Dear Steve,

On behalf of the Nez Perce Tribal Executive Committee (NPTEC), we offer the following comments on the draft environmental impact statement (DEIS) for the Red Pines Project (the Project). As you are well aware, the South Fork Clearwater River is a critically important area where tribal members routinely exercise treaty rights to fish, hunt, camp, and gather. As the biggest tributary to the South Fork, Red River has a direct impact to water quality and fisheries throughout the South Fork of the Clearwater River. Therefore, the Tribe urges you to evaluate the proposed land management activities in the Red Pines Project and in all other projects on the impacts to treaty reserved resources and their habitats across the South Fork Clearwater River.

Analyze and Adopt a Watershed Restoration Alternative

The Tribe urges the Forest Service to analyze and adopt an alternative that is gentle on the landscape and maximizes watershed restoration in an aggressive manner. Red River is a critically important watershed that supports dwindling populations of salmon, steelhead, **bull** trout, and other resident fisheries. Red River is also a primary source of sediment to the South Fork Clearwater River. Therefore, any management undertaken by the Forest Service in Red River should focus on an aggressive plan to reduce sediment and recover these watersheds to improve habitat for threatened fisheries, as required by section 7(a)(2) of the Endangered Species Act.

Response 4-1. Fisheries. The Nez Perce National Forest Plan (October, 1987; page II-18) recognizes this commitment to the Nez Perce Tribe in Forestwide Management Direction. Furthermore, the Nez Perce NF has pursued an active and ongoing dialogue with the Nez Perce Tribe at key points during the development of this proposed project. The Tribe's advice and input have been sought at all phases and are continually being incorporated into this document. Alternative E was developed to provide an alternative that responds to issues associated with water quality, fisheries, and upward trend.

Response 4-2 Alternatives, Restoration.

Alternative E was developed to respond to these issues.

Response 4-3 Watershed and Fisheries.

Section 7(a)(2) of the Endangered Species Act provides direction that federal agencies insure any action authorized, funded, or carried out, in consultation with the appropriate regulatory agencies (U.S. Fish and Wildlife Service and/or NOAA Fisheries), is not likely to jeopardize the continued existence of any threatened or endangered species or result in destruction or adverse modification of designated critical habitat. Red River is not designated critical habitat for bull trout and to date has not been designated critical habitat for steelhead trout. We have completed a Biological Assessment (BA) that addresses the effects of the project on listed and sensitive fish species potentially affected by the project, habitat that could be designated as critical habitat for steelhead, and we are consulting with NOAA Fisheries and the U.S. Fish and Wildlife Service, as directed by Section 7(a)(2).

Both the Fisheries BA and the Biological Opinion for listed bull trout and steelhead trout will be incorporated into the Record of Decision.

Review of the Red Pines DEIS reveals that none of the analyzed alternatives promotes watershed restoration or provides for an upward trend in habitat capacity, as required by the land and resource management plan for the Nez Perce National Forest (the Forest Plan). Forest Plan, App. A at A-7, n.1. Further the Forest proposes to suspend the sediment standards for all priority watersheds in the project area. *Id.* at A-6--A- 7. Such a proposal falls well short of the Forest Service's trust responsibility to protect and enhance treaty reserved resources. Therefore, the Forest should modify the Red Pines Project to analyze an alternative that meets or exceeds the existing minimum Forest Plan standards.

Not only should the Forest Service analyze a watershed restoration alternative, the Forest Service should adopt and aggressively implement watershed restoration in Red River. Fulfillment of the Forest Service's trust responsibility to protect and enhance treaty reserved resources occurs on the ground, not just through justification or analysis in a DEIS.

Project Design

The Tribe understands that the Forest designed the Project in a fashion that avoids timber harvest in old growth areas and in inventoried roadless areas, and avoids high hazard landslide prone areas. *In those respects-similar* to the American and Crooked River Project-the Tribe views the Red Pines Project as an improvement over other projects where the Forest had proposed risky land management in these sensitive areas, later justified by faulty modeling and biased analysis. However, the DEIS proposes to suspend several forest plan standards and violate P ACFISH by treating fuels within sensitive riparian habitat conservation areas (RHCAs). In these respects, the Tribe views this Project as a failure and a step backward in responsible land management.

Purpose and Need

The Tribe remains concerned about the purpose and need for this project. One rationale is to reduce the risk of a catastrophic wild fire to the surrounding community of Elk City. However, review of the DEIS reveals that many of the proposed timber units are pretty far away and therefore unlikely to reduce the fire risk to Elk City. A second rationale for the Project is to address the pine beetle infestations in the lodgepole stands. Dead, dying, and at risk stands are proposed for harvest. The Tribe remains skeptical about the need to treat such stands, as fire and insect infestations are part of the natural stand replacement cycle for lodgepole pine, and these watersheds are well within their historic range of variability.

Response 4-4. Watershed and Fisheries Management. The USFS recognizes the below-objective conditions of these watersheds. The aquatic trend analysis is documented in the FEIS, Appendix E and an upward trend in aquatic condition is expected to be achieved with the newly developed Alternative E. Please see Responses 4-1 and 1-2.

Response 4-5. Alternatives.
Alternative E was developed to respond to these issues.

Response 4-6. Alternatives, Restoration. An adequate range of alternatives was considered but not analyzed in detail because it would not be responsive to the Purpose and Need of this project. (Refer to FEIS, Chapter 1).

Response 4-7 Aquatics/standards.
Please see Responses 4-1 and 1-2 regarding forest plan amendments.

Fuel reduction and other activities in streamside RHCAs were identified as a significant issue during project scoping, and alternatives were developed to address this issue. Of the action alternatives, only Alternative B proposes to treat fuels in RHCAs. As described in the FEIS in Section 3.1.2.4, PACFISH allows salvage cutting and other silvicultural treatments in RHCAs where certain conditions are met.

Response 4-8. Proposed Action, Purpose and Need.
Under the selected alternative, approximately 3% (3,454 acres) of the Red River watershed area is proposed for fuel reduction treatments. Insect activity is currently, and will continue to occur in untreated areas throughout the watershed.

We acknowledge that fire and insect infestations are natural processes that are integral components of the inherent disturbance regime and stand replacement process in the watershed. While most areas are within the historic range of variability, the risk of intense fire and severe fire effects is increasing as fuels accumulate without natural fire to reduce them. This has become a concern, as public and firefighter safety could be compromised in the event a large scale fire event occurs in these areas.

Please note that many of the proposed treatment areas are located along ridges, or near roads that provide public access and egress, or could be used as safety zones when fire occurs. By treating vegetative fuels in these areas, public and firefighter safety can be enhanced, in the event of a fire in, or near those areas.

Fish Recovery Efforts and Completion of the EAWS

Land management by the Forest Service should not compromise the Tribe's fish recovery efforts. Our Fisheries Department has made substantial investments in watershed restoration activities throughout the South Fork, and we conduct numerous outplantings of salmon and steelhead from our Newsome Creek satellite facility associated with the Nez Perce Tribal Hatchery. Another tribal effort has contributed substantial resources to the Forest Service to conduct ecosystem analyses at the watershed scale (EAWS).

Response 4-8 (continued)

Fuel reduction treatments would affect a short term, temporary change in vegetation structure in the treated areas. Existing species, notably lodgepole pine which is an aggressive colonizer, would naturally regenerate in treated areas where they are now present. Native species such as western larch and ponderosa pine could be reestablished in areas where they should occur but had been removed in the past. Opening some areas up by reducing stem densities would also stimulate forage production for wildlife such as deer, elk moose and snowshoe hares, as well as predators, or 10 to 20 years after treatments. After that length of time, high stem densities and canopy closure would tend to reduce foraging in those areas.

Current Forest policy mandates suppression of all natural ignitions, and there is no Wildland Fire Use plan in place to let some natural fires to burn for management purposes within the watershed. Most of the stands in treatments areas utilize prescribed fire as a surrogate to natural fire to reduce fuels. However, current fuel loadings are such in these areas that the risk of escape is too high to attempt to reintroduce fire with removing some material first.

Please refer to the purpose and need for the projects, FEIS, Chapter I, Section 1.5.

Response 4-9. Fisheries

We acknowledge the Nez Perce Tribe's efforts in fish recovery and habitat restoration in Red River and Newsome Creek. We developed Alternative E in response to issues and comments the Tribe has submitted. Alternative E addresses issues related to upward trend and instream habitat and is expected to result in an improving trend in watershed and stream condition in all subwatersheds affected by the project.

Over the past few years, tribal staff and consultants have worked hard with Forest Service staff to conduct EAWS for Slate Creek, Meadow Creek, Newsome Creek, and for Red River. The EAWS are important to the Tribe because they provide intergovernmental coordination between the Tribe and the Forest, and result in integrated management recommendations at the watershed scale. EAWS are also quite helpful at addressing cumulative effects to water quality and fisheries because they serve as a conservation strategy that is based on good science and integrity, rather than political pressure. Despite substantial investments in these EAWS by both the Tribe and the Forest, only one of the four EAWS on the Nez Perce National Forest has been completed (Slate Creek). The remaining three EAWS are still in draft form. The Tribe urges you to complete these EAWS. Further, any projects (such as Red Pines) should be plainly consistent with the EAWS.

Cumulative Effects and the TMDL for the South Fork Clearwater River

In light of all activities planned along the South Fork of the Clearwater River, the litmus test for tribal support of a project in Red River will be whether implementation-not just the analysis-provides for an upward trend in water quality and fish habitat, as required by the Forest Plan. The Tribe remains vitally concerned about the cumulative effects that continued logging and road building has on water quality and fish habitat in Red River and the South Fork.

The Tribe was a key player in the development of the plan to address the total maximum daily load (TMDL) of pollutants for the South Fork Clearwater River. The South Fork TMDL sets a sediment reduction target for the mainstem at Harpster of 25%, and it is expected that sediment reductions will need to occur throughout the upper basin. Sediment reductions for specific tributaries will be delineated by collaborating agencies and the Watershed Advisory Group in the TMDL Implementation Plan. It is the Tribe's expectation that because Red River is the biggest tributary to the South Fork, any project in Red River must clearly demonstrate a reduction in sediment in order to comply with the TMDL.

In addition, Red River is in violation of the State of Idaho temperature standards, and a temperature TMDL has been written for this watershed. SFCWR TMDL at 178; Ap. C (2004). Specific temperature reduction targets and surrogate shade targets have been established by the TMDL. *Id.* at Ap. G, Fig. G- 7. These targets have been set for as much as an 80% canopy increase in areas of the watershed. Yet the extensive logging and road building proposed by this Project and other projects along the South Fork will further retard the attainment of riparian management objectives (RMOs) in sensitive riparian habitat conservation areas (RHCAs). Such management inhibits the watershed from recovery by maintaining high temperatures and limiting recruitment of large woody debris which leads to poor fish habitat.

With numerous timber sales and road building being planned along the South Fork by the Forest Service, the Bureau of Land Management, and by private industry, the Tribe remains concerned about how this Project meets the requirements of the TMDL. In contrast, the extensive land management proposals along the South Fork will inhibit this critical watershed from recovery of excess sediment and high temperatures.

Response 4-10. EAWS, Watershed.

The Red River EAWS was completed in December 2003 and we appreciate your involvement and support in the completion of this document. The EAWS document recently was posted on the Nez Perce National Forest website at: <http://www.fs.fed.us/r1/nezperce/projects>. Red Pines project is consistent with the EAWS see Section 1.6.1.4 of the FEIS.

Response 4-11. Implementation, cumulative effects. See also Response 4-4.

The commitment to the public to maintain and improve water quality and fish habitat is detailed in the FEIS, Chapter 3, Section 3.67.1 deposited sediment; Section 3.6.7.2 Large Woody Debris; Section 3.6.7.3 Number and Quality of pools; 3.6.8 TES fish species. The cumulative effects discussion was supplemented with additional analysis in the FEIS, see Section 3.2 Cumulative Effects of the FEIS. Cumulative effects analysis for other resource areas has been also supplemented.

Response 4-12.

See response 6-3 or response 5-5.

This project is predicted to result in a net decrease in sediment yield to the South Fork Clearwater River over time (FEIS, Chapter III, Section 3.5.6.2 and Section 3.5.7). An implementation plan for the South Fork Clearwater River TMDLs is scheduled to be completed in 2005. No single project will be expected to achieve the entire TMDL sediment reduction goal. However, this project will contribute toward that goal. Consultation is underway with the IDEQ to determine whether the new Alternative E in the FEIS complies with the South Fork Clearwater River TMDLs.

Response 4-13. Watershed, temperature standards & TMDL.

With the exception of Alternative B, none of the action alternatives propose removal of trees from RHCAs for fuel reduction, except at limited locations where temporary roads cross RHCAs. Thus, existing shade levels would be protected to the extent that natural processes would continue to occur in the RHCAs. There is also a considerable amount of riparian planting planned under each alternative. This will occur in areas determined to be deficient in riparian vegetation and will contribute to the goal of increasing shade, as established in the water temperature TMDL. In addition, see Response 4-7 regarding Alternative B and PACFISH compliance.

Response 4-14. Watershed, TMDL, sediment, temperature.

See response 4-12.

Funding for Watershed Restoration and Tribal Participation

The Tribe understands that the Red Pines project is a deficit sale that will not pay for itself. This is a recurring concern of the Tribe because there is no guarantee that the proposed watershed restoration work will ever occur. As such, the analysis purporting to achieve an upward trend is merely a hollow promise that falls short of the Forest Service's duty to comply with applicable laws, regulations, and Forest Plan standards, not to mention the Forest Service's trust responsibility to protect and enhance treaty reserved resources and their habitats.

The Tribe understands the Forest is in a bind to obtain the funds necessary to carry out the Red Pines Project. We are interested in helping the Forest obtain funding for the watershed restoration activities, whether that be from Congressional appropriations, proposals to the Idaho Office of Species Conservation, the North Central Idaho Resource Advisory Committee, or through other sources. As such, the Tribe is also interested in participating in the implementation and monitoring of the proposed watershed restoration activities. As you know, our Watershed Division has a strong record of working with the Forest Service on watershed restoration projects such as road obliteration, culvert replacement, riparian plantings, stream channel improvements, and watershed monitoring. We would like to expand our partnership throughout the project area.

Conclusion

The Tribe questions how the Forest Service can meet legal requirements and the trust responsibility to protect treaty reserved resources and their habitats when there is currently planned well over 100 mmbf of timber sales and nearly 100 miles of new roads throughout the South Fork of the Clearwater River. These projects place unnecessary and cumulative risks to already threatened fisheries and impaired water quality. We urge you to take a hard look at the sedimentation effects of this and all other projects across the entire South Fork to the Clearwater River, not just in the priority watersheds within Red River.

Sincerely,
/s/ Anthony D. Johnson
Anthony D. Johnson
Chairman

cc: NOAA Fisheries (D. Brege)
USFWS (C. Fletcher)

Response 4-15 Watershed, upward trend.

Alternative E was specifically designed to meet the upward trend requirements stated in Appendix A of the Forest Plan in all subwatersheds. The rationale for this conclusion is found in Chapter 3 and Appendix H of the FEIS. The commitment to the public to maintain and improve water quality and fish habitat is detailed in the FEIS, Chapter 3.

See FEIS, Chapter 3, Section 3.6.

Response 4-16 Implementation.

Thank you for your support in implementation and monitoring in the Red River watershed. We would encourage this partnership also.

Response 4-17. Alternatives, watershed, cumulative effects.

See also Response 4-11.

The sediment yield cumulative effects analysis in the FEIS encompasses the South Fork Clearwater River. It takes into account past, ongoing and foreseeable projects. This project is predicted to result in a net decrease in sediment yield to the South Fork Clearwater River over time (refer FEIS, Chapter III, Section 3.5.7).

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